IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1567 OF 2005

Shivaji Pandurang Suryawanshi. ... Petitioner

Versus.

1. Kum.Bharati Shivaji Suryawanshi
2. Sau.Savita Shivaji Suryawanshi. ... Respondents.

Shri K.K.Malpathak for the Petitioner.

Shri Nilesh Patil for the Respondents Nos.1 & 2.

Ms.M.M.Deshmukh, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATED : 27th October, 2005.

P.C.:

1. An opportunity was given to the parties to explore possibility of an amicable settlement. However, an amicable settlement could not take place. Rule. The Respondents waive service. The writ petition is taken up for final hearing with the consent of the Advocates appearing the parties. Heard the learned Advocates for the parties.

2. The Petitioner is the husband and the Respondent No.2 is the wife. The Respondent No.1 is the minor daughter of the Petitioner and the Respondent No.2. An application was made under section 125 of the Code of Criminal Procedure, 1973 by the Respondents Nos.1 and 2 for seeking monthly allowance by way of maintenance. The learned Judicial Magistrate First Class partly

allowed the application and the Petitioner was directed to pay monthly allowance at Rs.1500/- per month to the Respondent No.2 for the maintenance of the Respondent No.1 with effect from the date of making the application. The application for maintenance of the Respondent No.2 was rejected by the learned Magistrate on the ground that she was not the legally wedded wife of the Petitioner. The learned Judge observed that the Respondent No.1 will be entitled to monthly allowance only till she attains majority. The Revision Applications were filed by both the parties to the Sessions Court which came to be dismissed by the impugned Judgment and Order dated 6th April 2005.

3. Shri Malpathak appearing for the Petitioner pointed out that take home salary of the Petitioner is only Rs.4000/- after making all deductions and it is impossible for the Petitioner to pay the monthly maintenance of Rs.1500/-. He submitted that the Petitioner is married person and has a wife and daughter to support. He submitted that the Petitioner has to support his old ailing mother. The learned Advocate appearing for the Respondent No.1 and 2 pointed out that the monthly salary of the Petitioner is Rs.10,000/- to Rs.12,000/- and the Petitioner is an owner of an agricultural land and therefore, no interference is called for

4. I have considered the submissions. The learned Magistrate held that the Petitioner was employed as a Teacher and was getting salary. The learned Magistrate noted that the gross salary of the Petitioner was Rs.9377/- and the net salary is Rs.4014/-. The learned Advocate for the Petitioner has produced for my perusal a certified copy of the document showing the income of the Petitioner. The said document shows that in December 2000, the gross salary of the Petitioner was Rs.9377/- and the total deductions were Rs.5363/- out of which a sum of Rs.3900/- appears to be the instalment for repayment of loan to the credit society. It must also be noted that the document shows the income of December 2000. Since the Petitioner is employed in a recognised School, it is obvious that by this time there must be a reasonable increase in the salary of the Petitioner. However, the fact remains that at the time of filing of the Application, the Petitioner was getting a take home salary of only Rs.4000/- and apart from the Respondent No.1, he was required to maintain his wife, daughter and mother. In my view, the learned Magistrate ought to have considered these important aspects while fixing the quantum of maintenance payable from the date of making the Application. Normally the maintenance amount is payable from the date of the Application. However, considering the net income of the Petitioner and the number of persons depending on the Petitioner, he could not have been directed to pay a sum of

Rs.1500/- p.m. to the Respondent No.1 from the date of filing of the application. To that extent the order deserves to be modified. Considering the income of the Petitioner on the date of the Application, the Petitioner will have to pay a sum of Rs.1000/- to the Respondent No.2 from the date of filing of the application till date of decision i.e. 19th September 2001 of the Application and for further period the Petitioner will have to pay at the rate of Rs.1500/- per month.

6. Hence the following order is passed:

i) The impugned order dated 19th September 2001 passed by the leanred Magistrate is substituted by the following:

"a) Application is partly allowed. Prayer made in favour of the Applicant No.1 is rejected.

b) The Opponent shall pay allowance of Rs.1000/- per month to the Applicant No.1 for the maintenance of the Applicant No.2 from date of making the Application till 19th September 2001.

c) The Opponent shall pay allowance at the rate of Rs.1500/- per month to the Applicant No.1 for the maintenance of the Applicant No.2 from 20th September 2001 till she attains majority."

ii) It will be open for the Respondent No.1 to withdraw the amount of costs of Rs.5000/- deposited in this Court if not withdrawn till today.

iii) Rule is made partly absolute in above terms.

Judge.